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*Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108*

Advisory Opinion

April 10, 2002
AO-02-11

Dwight Robson, Campaign Manager
Shannon O'Brien Committee
P.O. Box 8914
Boston, MA 02114

Re: Joint Campaign Expenditures

Dear Mr. Robson:

This letter is in response to your February 27 and March 7 requests for opinions regarding joint campaign expenditures by the Shannon O'Brien Committee and the Christopher Gabrieli Committee ("the Committees").

Shannon O'Brien and Christopher Gabrieli are candidates for Governor and Lieutenant Governor, respectively, who have announced their intent to run together as a team in the state primary election. The Committees have made and will continue to make joint expenditures for certain campaign expenses.¹ You have described three such expenditures and have sought guidance as to how the Committees should allocate the costs:

- (1) Campaign Announcement: The Committees mailed the announcement attached to this opinion as Exhibit A to financial and political supporters of Shannon O'Brien and Democratic Party activists who have not yet pledged their support to either candidate. There was roughly the same number of recipients in each category.

You have indicated that the purpose of sending the announcement to O'Brien's supporters was to promote the candidacy of Gabrieli for Lieutenant governor. On the other hand, the portion of the mailing targeting undecided Democrats sought to promote the election of both candidates. For that reason you proposed that the O'Brien Committee pay 25% of the mailing costs and that the Gabrieli Committee pay 75%.

¹ This office does not generally issue advisory opinions on matters that have already taken place. In this instance, however, your questions regarding the allocation of costs for joint expenditures may recur in the future. In addition, the issues raised are relevant and may be of interest to other candidates.

- (2) Campaign Signs: The Committees intend to purchase campaign signs similar to the sample attached to this opinion as Exhibit B. Based on the amount of space that will be allocated to each candidate on the face of each sign, you have proposed that the O'Brien Committee pay 75% of the sign costs and that the Gabrieli Committee pay 25%.
- (3) Consultant Fees: Despite the fact that they generally maintain separate staffs, the Committees anticipate that they will be hiring a consultant(s) in the course of the campaign to provide services to both Committees. Presently, the Committees seek such a consultant to recruit, train and supervise volunteers. This consultant "will be supervised by both campaigns and his/her contract will be subject to termination by each campaign individually." In addition, you have stated that the Committees "will negotiate individually with all consultants retained by each campaign, even those that may be retained by both campaigns."

You have proposed that the Committees pay equal shares of consultant costs where a consultant has been hired to work for both Committees.

Since each of these expenditures relates to the broader issue of how costs for joint campaign activity should be allocated between the Committees, I have not attempted to set forth an answer to each question in the form and order you have presented them. Instead, I will address the larger issue.

In Weld for Governor v. Director of the Office of Campaign and Political Finance, 407 Mass. 761 (1990), the Supreme Judicial Court held that expenditures by candidates running as a team for governor and lieutenant governor to purchase buttons, signs and bumper stickers did not result in unlawful contributions between the campaigns.² The Court reasoned that the purchases made by each committee were legitimate expenditures because the candidates were a bona fide team for companion offices and the primary purpose of each candidate in making the expenditure was to promote his own election to office. Id. at 770-72. In this regard, any residual benefit to the "team" or the co-candidate was secondary. Id. at 770. In contrast, a joint expenditure to promote only one-half of the ticket would be prohibited by M.G.L. c. 55, § 6, since a payment by a statewide candidate's committee to promote someone other than the candidate whose committee is making the expenditure would be deemed to be a contribution. Id. at 770.

Pursuant to this decision, OCPF promulgated regulations governing joint campaign expenditures. See 970 CMR 2.11 (joint campaign activity) and 970 CMR 2.12 (joint fundraising events). According to 970 CMR 2.11(4), "costs for materials, services, or flyers shall be allocated between or among political committees participating in joint campaign activities based upon the amount of air time or print space allocated to each committee." In addition, joint campaign materials should be distributed in a manner that benefits each candidate. See 970 CMR 2.11(5).

Candidates for Governor or Lieutenant Governor must pay for joint expenditures separately because a transfer by one depository candidate to another candidate's account to allow that candidate to pay a joint obligation would be prohibited by M.G.L. c. 55, §§ 1, 6, 7 and 19. Each candidate should therefore directly pay the vendor for his share of the total amount owed with a depository

² The campaign finance law prohibits statewide candidates from making contributions to any other political committees or campaigns. See M.G.L. c. 55, § 6. A "contribution" is defined, in relevant part, as the payment of "money or anything of value to an individual, candidate, political committee, or person acting on behalf of said individual, candidate or political committee, for the purpose of influencing the nomination or election of said individual or candidate ... and shall include any ... (2) transfer of money or anything of value between political committees."

check. The nature and fact of the joint expenditure, as well as the identity of any participating committee(s), should be disclosed on the face of each check. See 970 CMR 2.11(6).

The allocation of costs proposed by the Committees for the expenditures set forth above generally appear to conform to the campaign finance regulations.³ In fact, the Committees are in the best position to make this type of assessment based on the intended purpose of the expenditure. It is important, however, that the Committees are able to articulate a reasonable basis for their cost allocations pursuant to the standards set forth in 970 CMR 2.11, should this office require clarification.

In the first instance, this means that expenditures for campaign materials and literature, as well as media advertisements, should be divided based on the amount of print space or air time devoted to each candidate. See 970 CMR 2.11(4) and (5). Costs for certain services, such as the consultants that you have described, that are not divisible based on factors such as print space or circulation should be allocated based on the primary purpose of the expenditure. See 970 CMR 2.11(2). For example, the Committees must pay a consultant in equal shares if the consultant is hired to devote the same amount of time, and provide substantially identical services, to both campaigns. On the other hand, consultants who are hired primarily to assist one candidacy should be paid accordingly.

This opinion is issued within the context of the campaign finance law and is provided solely on the basis of representations in your letters. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

MJS/bp

³ With regards to the mailing, you have stated that the distribution of the announcement to O'Brien supporters "neither promoted nor benefited O'Brien's candidacy." Yet the announcement was a two-page letter signed by O'Brien regarding her campaign and candidacy, written on letterhead featuring O'Brien's name and setting forth her campaign committee's address. Under these circumstances, it would seem as though the mailing was also distributed, at least in part, to promote her election to office.